

TV station to a VHF channel in the same community in the course of the rule making proceeding to amend § 73.202(b), § 73.504(a) or § 73.606(b) if any of the following conditions are met:

- (1) There is no other timely filed expression of interest, or
- (2) If another interest in the proposed channel is timely filed an additional equivalent class of channel is also allotted, assigned or available for application, or
- (3) With respect to FM, the modification of license or permit would occur on a mutually exclusive higher class adjacent or co-channel.

NOTE 1: In certain situations, a licensee or permittee may seek an adjacent, intermediate frequency or co-channel upgrade by application. See § 73.203(b) of this chapter.

(h) Where licensees (or permittees) of television broadcast stations jointly petition to amend § 73.606(b) and to exchange channels, and where one of the licensees (or permittees) operates on a commercial channel while the other operates on a reserved noncommercial educational channel within the same band, and the stations serve substantially the same market, then the Commission may amend § 73.606(b) and modify the licenses (or permits) of the petitioners to specify operation on the appropriate channels upon a finding that such action will promote the public interest, convenience, and necessity.

NOTE 2: Licensees and permittees operating Class A FM stations who seek to upgrade their facilities to Class B1, B, C3, C2, C1, or C on Channel 221, and whose proposed 1 mV/m signal contours would overlap the Grade B contour of a television station operating on Channel 6 must meet a particularly heavy burden by demonstrating that grants of their upgrade requests are in the public interest. In this regard, the Commission will examine the record in rule making proceedings to determine the availability of existing and potential non-commercial education service.

(i) In the course of the rule making proceeding to amend § 73.202(b) or § 73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

(j) Whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

- (1) A certification that neither the party withdrawing its interest nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the expression of interest;
- (2) The exact nature and amount of any consideration received or promised;
- (3) An itemized accounting of the expenses for which it seeks reimbursement; and
- (4) The terms of any oral agreement related to the dismissal or withdrawal of the expression of interest.
- (5) In addition, within 5 days of a party's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:
 - (i) A certification that neither it nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the party withdrawing its expression of interest; and
 - (ii) The terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[39 FR 44022, Dec. 20, 1974, as amended at 40 FR 53391, Nov. 18, 1975; 41 FR 1287, Jan. 7, 1976; 51 FR 15629, Apr. 25, 1986; 51 FR 20291, June 4, 1986; 52 FR 8260, Mar. 17, 1987; 52 FR 25866, July 9, 1987; 54 FR 16366, Apr. 24, 1989; 54 FR 26201, June 22, 1989; 55 FR 28914, July 16, 1990; 58 FR 38535, July 19, 1993; 59 FR 59503, Nov. 17, 1994; 61 FR 43472, Aug. 23, 1996]

§ 1.421 Further notice of rulemaking.

In any rulemaking proceeding where the Commission deems it warranted, a

further notice of proposed rulemaking will be issued with opportunity for parties of record and other interested persons to submit comments in conformity with §§1.415 and 1.419.

§ 1.423 Oral argument and other proceedings.

In any rulemaking where the Commission determines that an oral argument, hearing or any other type of proceeding is warranted, notice of the time, place and nature of such proceeding will be published in the FEDERAL REGISTER.

[58 FR 66300, Dec. 20, 1993]

§ 1.425 Commission action.

The Commission will consider all relevant comments and material of record before taking final action in a rulemaking proceeding and will issue a decision incorporating its finding and a brief statement of the reasons therefor.

§ 1.427 Effective date of rules.

(a) Any rule issued by the Commission will be made effective not less than 30 days from the time it is published in the FEDERAL REGISTER except as otherwise specified in paragraphs (b) and (c) of this section.

(b) For good cause found and published with the rule, any rule issued by the Commission may be made effective within less than 30 days from the time it is published in the FEDERAL REGISTER. Rules involving any military, naval or foreign affairs function of the United States; matters relating to agency management or personnel, public property, loans, grants, benefits or contracts; rules granting or recognizing exemption or relieving restriction; rules of organization, procedure or practice; or interpretative rules; and statements of policy may be made effective without regard to the 30-day requirement.

(c) In cases of alterations by the Commission in the required manner or form of keeping accounts by carriers, notice will be served upon affected carriers not less than 6 months prior to the effective date of such alterations.

§ 1.429 Petition for reconsideration.

(a) Any interested person may petition for reconsideration of a final action in a proceeding conducted under this subpart (see §§1.407 and 1.425). Where the action was taken by the Commission, the petition will be acted on by the Commission. Where action was taken by a staff official under delegated authority, the petition may be acted on by the staff official or referred to the Commission for action.

NOTE: The staff has been authorized to act on rulemaking proceedings described in §1.420 and is authorized to make editorial changes in the rules (see §0.231(d)).

(b) A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;

(2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts relied on is required in the public interest.

(c) The petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken should be changed.

(d) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. No supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement. The petition for reconsideration shall not exceed 25 double-spaced typewritten pages.

(e) Except as provided in §1.420(f), petitions for reconsideration need not be served on parties to the proceeding. (However, where the number of parties